

§ 44.23

(8) To hold conferences for settlement or simplification of issues by consent of the parties;

(9) To make decisions in accordance with the Act, this part, and section 557 of title 5 of the United States Code; and

(10) To take any other appropriate action authorized by this part, section 556 of title 5 of the United States Code, or the Act.

(b) *Disqualification.* (1) When an administrative law judge deems himself disqualified to preside over a particular hearing, he shall withdraw therefrom by notice on the record directed to the Chief Administrative Law Judge.

(2) Any party who deems an administrative law judge for any reason to be disqualified to preside or continue to preside over a particular hearing, may file with the Chief Administrative Law Judge of the Department of Labor a motion to be supported by affidavits setting forth the alleged grounds for disqualification. The Chief Administrative Law Judge shall rule upon the motion.

(c) *Contumacious conduct; failure or refusal to appear or obey rulings of a presiding administrative law judge.* (1) Contumacious conduct at any hearing before the administrative law judge shall be grounds for exclusion from the hearing.

(2) If a witness or party refuses to answer a question after being directed to do so or refuses to obey an order to provide or permit discovery, the administrative law judge may make such orders with regard to the refusal as are just and appropriate, including an order denying the application of a petitioner or regulating the contents of the record of the hearing.

(d) *Referral to Federal Rules of Civil Procedure and Evidence.* On any procedural question not regulated by this part, the act, or the Administrative Procedure Act, an administrative law judge shall be guided to the extent practicable by any pertinent provisions of the Federal Rules of Civil Procedure or Federal Rules of Evidence, as appropriate.

(e) *Remand.* The presiding administrative law judge shall be authorized to remand the petition for modification proceeding to the appropriate Administrator based upon new evidence which

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was not available to the Administrator and which may have materially affected the Administrator's proposed decision and order. Remand may be upon the judge's own motion or the motion of any party, and shall be granted in the discretion of the presiding administrative law judge.

[43 FR 29518, July 7, 1978, as amended at 55 FR 53442, Dec. 28, 1990]

§ 44.23 Prehearing conferences.

(a) *Convening a conference.* Upon his own motion or the motion of a party, the administrative law judge may direct the parties or their counsel to meet with him for a conference to consider:

(1) Simplification of issues;

(2) Necessity or desirability of amendments to documents for clarification, simplification, or limitation;

(3) Stipulations and admissions of facts;

(4) Limitation of the number of parties and expert witnesses; and

(5) Such other matters as may tend to expedite the disposition of the proceeding and assure a just conclusion thereof.

(b) *Record of conference.* The administrative law judge may, where appropriate, issue an order which recites the action taken at the conference, amendments allowed to any filed documents, and agreements made between the parties as to any of the matters considered. The order shall limit the issues for hearing to those not disposed of by admissions or agreements. Such an order controls the subsequent course of the hearing, unless modified at the hearing to prevent manifest injustice.

§ 44.24 Discovery.

Parties shall be governed in their conduct of discovery by appropriate provisions of the Federal Rules of Civil Procedure, except as provided in § 44.25 of this part. After consultation with the parties, the administrative law judge shall prescribe a time of not more than 45 days to complete discovery. Alternative periods of time for discovery may be prescribed by the presiding administrative law judge upon the request of any party. As soon as is practicable after completion of discovery, the administrative law judge

shall schedule a hearing in accordance with § 44.28 of this part.

[55 FR 53442, Dec. 28, 1990]

§ 44.25 Depositions.

(a) *Purpose.* For reasons of unavailability or for purpose of discovery, the testimony of any witness may be taken by deposition.

(b) *Form.* Depositions may be taken before any person having the power to administer oaths. Each witness testifying upon deposition shall be sworn, and the parties not calling him shall have the right to cross-examine him. Questions propounded and answers thereto, together with all objections made, shall be reduced to writing, read to or by the witness, subscribed by him, and certified by the officer before whom the deposition is taken. The officer shall send copies by registered mail to the Chief Administrative Law Judge or the presiding administrative law judge.

§ 44.26 Subpoenas; witness fees.

(a) Except as provided in paragraph (b) of this section, the Chief Administrative Law Judge or the presiding administrative law judge, as appropriate, shall issue subpoenas upon written application of a party requiring attendance of witnesses and production of relevant papers, books, documents, or tangible things in their possession and under their control. A subpoena may be served by any person who is not a party and is not less than 18 years of age, and the original subpoena bearing a certificate of service shall be filed with the administrative law judge. A witness may be required to attend a deposition or hearing at a place not more than 100 miles from the place of service.

(b) If a party's written application for subpoena is submitted 3 working days or less before the hearing to which it relates, a subpoena shall issue at the discretion of the Chief Administrative Law Judge or presiding administrative law judge, as appropriate.

(c) Any person served with a subpoena may move in writing to revoke or modify the subpoena. All motions to revoke or modify shall be served on the party at whose request the subpoena was issued. The administrative law judge shall revoke or modify the sub-

poena if in his opinion the evidence required to be produced does not relate to any matter under investigation or in question in the proceedings; the subpoena does not describe with sufficient particularity the evidence required to be produced; or if for any other reason, sufficient in law, the subpoena is found to be invalid or unreasonable. The administrative law judge shall make a simple statement of procedural or other grounds for the ruling on the motion to revoke or modify. The motion to revoke or modify, any answer filed thereto, and any ruling thereon shall become a part of the record.

(d) Witnesses subpoenaed by any party shall be paid the same fees for attendance and mileage as are paid in the District Courts of the United States. The fees shall be paid by the party at whose instance the witness appears.

§ 44.27 Consent findings and rules or orders.

(a) *General.* At any time after a request for hearing is filed in accordance with § 44.14, a reasonable opportunity may be afforded to permit negotiation by the parties of an agreement containing consent findings and a rule or order disposing of the whole or any part of the proceedings. Allowance of such opportunity and the duration thereof shall be in the discretion of the Chief Administrative Law Judge, if no administrative law judge has been assigned, or of the presiding administrative law judge. In deciding whether to afford such an opportunity, the administrative law judge shall consider the nature of the proceeding, requirements of the public interest, representations of the parties, and probability of an agreement which will result in a just disposition of the issues involved.

(b) *Contents.* Any agreement containing consent findings and rule or order disposing of a proceeding shall also provide:

(1) That the rule or order shall have the same effect as if made after a full hearing;

(2) That the record on which any rule or order may be based shall consist of the petition and agreement, and all other pertinent information, including: any request for hearing on the petition; the investigation report; discovery;